

FW: Progress?

From: **Tim** | tim@allpermits.com

Thursday,
Mar 17,
3:49 PM

To: **PC Secretary** | kassontwppcsec@gmail.com, **Gerry Roush** | groush@centurytel.net, **Jim Anderson** | jim@andersonbuilders.info, **Tad Carter** | cartertad@gmail.com, **Dave Noonan** | noonski001@hotmail.com, **Allison Hubley** | aghubley@hotmail.com

Cc: **Roger Noonan** | bethnoonan571@gmail.com, **Dana Boomer** | kassontwpcclerk@gmail.com, **Greg Julian** | gregoryrjulian@gmail.com, **Tad Carter** | cartertad@gmail.com, **Julia Carter** | kassontownshiptreasurer@gmail.com, **Tom Grier** | tag@runningwise.com

Per my previous email, please see below. Staff comments are embedded within Mr. Lively's text.....

Mr. Lively will be at the meeting Monday night trying to convince the PC members to modify and or clarify the text of documents for a more lenient result. **1. Staff's opinion is that if the PC members feel strongly enough to change language in the SUP Order of Approval or the Findings of Facts, that the matter be tabled until the next meeting allowing staff to provide updated documents reflecting those changes.

If PC members have any questions, please contact me directly instead of replying to all.

Thanks in advance,

Tim

Timothy A Cypher

Cypher Group Inc.

Centerville, Empire, Kasson, Glen Arbor, Leland & Solon Zoning/Planning Office

231-360-2557

tim@allpermits.com

From: **Jim Lively** | jim@thelivelyfarm.com

To: **Tim Cypher** | tim@allpermits.com

Tuesday, Mar 15, 7:58 AM

Hello Tim and Tom -

Thanks for sending along the draft Final Findings of Fact for my review. I must note that it seems unfair that I have less than 48 hours before our meeting to review and comment, while it took you more than seven months to complete this step. Nonetheless, I am including my comments below.

I have a process clarification, and a few points of difference in your recollection of the Planning Commission's

approval following their July 19th review and discussion of these draft findings.

Process Point:

According to the zoning ordinance, only the Planning Commission is authorized to approve a Special Use Permit - not staff. So these are draft documents until signed by the Planning Commission chair and secretary.

Correct.

At the last meeting of the Planning Commission, they asked us to meet to review the draft SUP Approval Letter and Findings of Fact and identify points of disagreement, and bring those points to the Planning Commission meeting on March 21st. We should expect that the PC will render a final decision on any points of disagreement at that meeting, at which point we will have a Final SUP Approval and Final Findings of Fact. **Yes.....**

Unless proposed changes are approved by the PC members, then see note **1. above.

Points of Disagreement with Staff Interpretation of SUP Approval and Findings:

As you know, Lively Holdings was approved for Phase 1 of our project on July 19th, and we rescinded our Phase 2 proposal in September. However, many of the Findings for this approval drafted by staff were influenced by concerns about Phase 2 - which are no longer relevant. My observation is that staff added elements to both the Findings of Fact and SUP Approval Letter that were either not discussed by the Planning Commission, or are no longer relevant to our proposal as they were discussed by the Planning Commission in the context of the now-rescinded Phase 2. **Not True. Staff used the minutes of the meetings to come to the conclusions which were memorialized in the SUP Order of Approval and Findings of Facts. Staff's responsibilities are to ensure the documents are clear and precise and defensible for enforcement purposes.**

Here are the areas where I believe the staff has exceeded their authority and added restrictions to our campground SUP that were not intended or discussed by the Planning Commission: **Staff respectfully disagrees.**

1) In the Findings of Fact conditions pursuant to Section 7.8 of the ordinance, condition number 10 describes a prohibition on outdoor amplified music (other than our three approved events) - but inappropriately has added "Indoor amplified music is also prohibited". Our campground SUP approval is ONLY for outdoor campground uses. We have removed any discussion of indoor uses as part of this approval - they were only relevant as part of Phase 2, which has been rescinded. The Planning Commission never discussed or raised any concerns or issues about indoor uses related to the campground expansion. So it is inappropriate and an over-reach by staff to include restrictions on any potential future indoor uses. **I request that this prohibition on indoor amplified music be removed. Staff respectfully disagrees. In the minutes of the July 19, 2021 PC minutes, Page 5, 5th paragraph , it is noted that " Chair Otto advised planning commissioners to adopt the attorney recommendations with Lively having an**

issue with number 12 of prohibiting acoustic music. Discussion followed whether to keep the attorney's recommendation of prohibiting acoustic music. All planning commission members agreed to keep all of the attorney's recommendations. The planning commissioners agreed that any changes can be made once the sound engineer's report is received. See attached letters from our attorney and sound engineer.

2) In the Findings of Fact, Condition 11 states "Acoustic music is also prohibited within the entirety of the Backyard Burdickville site, including the common areas as well as individual campsites. This prohibition will remain in effect until such time as the Township's sound engineer has conducted on site testing and review, and acoustic music will then only be allowed, if at all, under the conditions set forth by the Planning Commission at that time."

The Township's sound engineer is no longer engaged, as that was predicted to be part of our Phase 2 application. Without the Township conducting a sound test, this prohibition on outdoor acoustic music is overly strict and redundant. Our project should be governed by the same nuisance provisions as any other project in Kasson Township, as well as the "conditions set forth by the Planning Commission". Condition 8 states "Noise/sound levels within the campsites, at all times, shall be controlled so that persons do not disturb the public peace and quiet by shouting, whistling, loud, boisterous, or vulgar conduct, the playing of musical instruments, phonographs, radios, televisions, tape players or any other means of amplification at any time or place so as to unreasonably annoy or disturb the quiet, comfort and repose of persons in the vicinity."

And condition 9 states "The campsites shall otherwise not create a "nuisance defined by as an offensive, annoying, unpleasant, or obnoxious thing or practice or a cause or source of annoyance... including but not limited to: noise....; noise of a congregation of people, particularly at night".

Finally, Section 7.7 findings (page 3) explicitly state "Applicant also understands that if nuisance complaints are received and substantiated for any use onsite, Enforcement action could take place. Property owner will make every reasonable attempt to minimize and mitigate the impact. Property owner will adhere to all conditions provided herein placed by the Planning Commission."

The SUP Approval Letter also repeats this excessive statement that was not intended by the Planning Commission: "No combined- group acoustic music is allowed on the Property. This means acoustic music generated by a one or more musicians and intended for a collective audience including multiple members of the public at large and/or multiple campers on common areas of the Property. This restriction does not prohibit the use of a single acoustic instrument, such as a guitar, within and for an individual campsite."

I believe the prohibition of acoustic music anywhere on our 19 acre property is redundant with other conditions, overly restrictive and was not intended by the Planning Commission. I recall the intent was to be temporary, to allow for a sound engineer to set a decibel standard. If the township wishes to enact a noise ordinance to govern appropriate decibel levels, we would abide by those restrictions. But without such an ordinance, we believe the intent of the Planning Commission was for our campground to abide by the nuisance ordinance. In fact, that is

clearly stated elsewhere in these findings. I request that this prohibition against all acoustic outdoor music be removed from both the Findings of Fact, and SUP Approval Letter. **Staff recommends no changes..... See notes above and remember, noise and sound can be generated from 40 campsites which could rise to the level of nuisance. Without a “baseline sound study” it will be extremely difficult to enforce nuisance complaints as the township doesn’t have a nuisance / sound ordinance.**

3) The SUP Approval Letter incorrectly states that "No public or semi-public events are permitted on the Property, other than the camping activity at the campsites." This was absolutely never considered by the Planning Commission, as is clear in the minutes of the July 19th meeting (page 7): "1. Definition of public and semi-public events as discussed with ZA – Planning commission members in agreement to table until Phase Two discussions begin." This is also recognized in the Findings of Fact related to Section 7.10 (page 7).

Section 4.9.1 of the Zoning Ordinance titled "Permitted Uses" is extremely clear that "Public and semi-public uses, including community meeting halls, parks and playgrounds" are permitted. Therefore, this prohibition included by staff in the SUP Approval Letter is not appropriate, as it was not discussed or intended to be included by the Planning Commission. **I am requesting that the statement about "Public or semi-public events" be removed from the SUP Approval Letter. Staff recommends no changes..... The reason being is that Mr. Lively has consistently thought that anything listed in the zoning ordinance as a use by right, doesn’t requirement any approvals or review by the Planning Commission. At yesterday’s meeting staff cleared the air by siting the sections of the zoning ordinance which clearly state otherwise. Section 8.1 to be specific ! Land development affects the character of the community and its public health, safety, and general welfare. This Chapter provides that all land uses shall be subject to development site plan review except a single or two-family dwelling located on a single lot and agricultural uses not subject to a Special Use Permit or as otherwise indicated in this Ordinance. Additionally, staff’s intent for keeping this passage in the documents is to make sure that if the property is transferred at some point in time in the future, any heirs, or assigns will be aware of this restriction.**

Finally, I wish to discuss two minor differences to the landscaping provisions that I recall from the meeting with the Planning Commission:

Landscaping and trees

A. Parking / Roadways

The SUP Approval Letter requires that "four-foot deciduous shade trees with at least 1 1/2 inch caliper shall be

placed around the parking area (one tree for every six (6) parking places)." While we intend to plant large deciduous trees around the parking area, I also recall clearly that we were authorized to use a solid fencing screen to block the parking area from M-72, which we also intend to do. **I request that a screen fence be added as an adequate landscaping around the gravel parking area. PC members to determine.**

B. Trees at perimeter of site

The SUP Approval Letter requires "Deciduous or evergreen trees, at least three feet in height shall be placed along the west perimeter of the Property where there is a gap of more than 10 feet between existing trees. In the event that the

existing trees located along the west perimeter of the property are lost, they shall be replaced by deciduous or evergreen trees, at least three feet in height so that the gap is no more than 10 feet wide between trees."

However, the minutes from July 19th meeting clarify that the requirement for trees along the west perimeter do NOT need to be four foot trees, but instead can be planted as bare root seedlings from the conservation district. That's my recollection from the discussion, which is only reflected in the minutes as "small trees". However, the minutes clearly reflect small trees are distinct from the four-foot trees required to be planted around the parking areas: "Chair Otto confirmed with Cypher that the performance guarantee would be the gravel for parking areas, four foot trees around parking areas, and small trees for the voids in the perimeter."

I request that the SUP Approval Letter clarify that small (seedling) trees are adequate to be planted along the west side of the property - except for the gap in the existing mature trees, which will be planted with three-foot trees at 10 foot intervals. PC members to determine.

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I hope that this letter helps us advance our discussion tomorrow toward agreement, or to clarify our points of disagreement for a final decision by the Planning Commission at their March 19th meeting. I look forward to talking with you both tomorrow.

- Jim Lively

From: **M Jim Lively** | jim@thelivelyfarm.com

Thursday, Feb 17, 10:12 AM

Hi all -

We finally got our letter from the township, copied below. You can also see my email to attorney Ross Bzdok, asking for guidance about how we can challenge the overly restrictive conditions that I believe didn't come from the Planning Commission but from attorney Grier (and likely with input from Dana Boomer).

None of this slows down anything we're planning this summer, as the 3 events were not challenged, and the campground conditions are what we expected (except the 3 foot trees along the west property line will cost us some money). But future uses in a restaurant and store appear to be inappropriately restrictive, so I intend to challenge that as quickly and inexpensively as possible. I'll let you know when I hear back from Ross.

- jim

From: **Jim Lively** | jim@thelivelyfarm.com

To: **Ross Hammersley** | ross@envlaw.com

Wednesday, Feb 16, 10:10 PM

Hi Ross-

It was really fun seeing you, Kate and that fun group at Workshop last night. It's nice to be able to socialize again!

I could use a little quick legal advice after finally receiving my Special Use permit for our campground today. It came a full five months after the planning commission approved it last September. The letter is attached.

I believe that the ZA exceeded what the PC required in several areas, but I'm not sure how to challenge that. The meeting minutes were very spare, and apparently the recording secretary quit soon after our approval - so I'm concerned about not having a full record of notes.

I also think some of the restrictions exceed what is appropriate for my application. You may recall that we initially were applying for two phases, with the second phase being an 'event center' for indoor music. The twp. attorney Tom Grier was very concerned about the sound from that use and was requiring a sound study and clearly it was going to be an uphill climb. So we rescinded that entire idea from our application, and focused only on the campground expansion, and retail store - a use by right. **"campgrounds" are NOT a use by right**

As you can see, they added a prohibition on all amplified indoor and outdoor music, and also any music groups anywhere on the 20-acre property. These are not relevant to a campground and unnecessarily restrictive. They also directly prohibited language from the commercial zoning district permitted uses related to 'public and semi-public events'.

My concern is that we intend to pursue a use by-right restaurant in another part of our building in future years - and this language appears to be trying to limit our use of indoor music as part of a restaurant. That seems inappropriately restrictive. Also, I don't recall those restrictions coming from the PC - I believe they are holdovers from Grier's concerns about our Phase 2 event center.

I'm thinking I may need to go to ZBA to clear this up. But not sure; and if so, I'll likely need your help.

Thanks for any help.

- jim

From: **M Ross Hammersley** | ross@envlaw.com

Tuesday, Jun 22, 2021, 7:10 PM

Hey there Jim - just wanted to touch base quickly to see if you got any favorable outcomes from last night's meeting?

Hoping there might be a sliver or two of good news...

Best,

r

Ross A. Hammersley
Olson, Bzdok & Howard, PC
Sent from my iPhone.
